

SECTION AGENCY
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

REGION VII

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REGIONAL HEARING CLERK

CONSENT AGREEMENT
AND FINAL ORDER

Docket No. RCRA-07-2009-0009

I. PRELIMINARY STATEMENT

The Complainant and Respondent subsequently entered into negotiations concerning the Compliance Order and attempted to settle the allegations contained in the Complaint. This Consent Agreement and Final Order is the result of such negotiations and resolves all issues relating to the Compliance Order and the civil administrative claims arising from the allegations in the Complaint.

II. CONSENT AGREEMENT

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.
2. Respondent admits the jurisdictional allegations of the Complaint and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement and Final Order.
3. Respondent neither admits nor denies the factual allegations set forth in the Complaint.
4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth in the Complaint, and its right to appeal the proposed Final Order portion of this Consent Agreement and Final Order.
5. Respondent and Complainant agree to conciliate the matters set forth in the Complaint without the necessity of a formal hearing and to bear their respective costs and attorney's fees.
6. This Consent Agreement and Final Order resolves all civil administrative claims for the alleged RCRA violations identified in the Complaint. Complainant reserves the right to take enforcement action against Respondent for any violations of RCRA, or any violation of any other applicable law, not alleged in the Complaint and to enforce the terms and conditions of this Consent Agreement and Final Order.
7. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.
8. Respondent certifies that by signing this Consent Agreement and Final Order that to the best of its information and belief, Respondent's facility is in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.* and all regulations promulgated thereunder.
9. The effect of settlement described in Paragraph 6 above is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 8, above, of this Consent Agreement and Final Order.
10. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.
11. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

12. Respondent consents to performance of the compliance actions specified in Paragraph 4 of the Final Order below.

13. Respondent agrees that, in settlement of the claims alleged in the Complaint, Respondent shall pay a mitigated civil penalty of \$150,000 as set forth in Paragraph 1 of the Final Order below.

14. The penalty specified in Paragraph 13 above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, state, or local income tax purposes.

15. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of debt collection including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. §§ 901.9(c) and (d).

16. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

17. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount provided herein or, if not specified, an amount not to exceed \$37,500 per day per violation pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

18. This Consent Agreement and Final Order shall be effective upon filing. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

III. FINAL ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of this Consent Agreement and Final Order, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the effective date of this Final Order, Respondent shall pay a mitigated civil penalty of \$150,000.

2. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer of the United States" and remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

The Respondent shall reference the EPA Docket Number on the check. A copy of the check shall also be mailed to:

Jonathan Meyer
Office of Regional Counsel
U.S. EPA Region VII
901 N. 5th Street
Kansas City, Kansas 66101.

In addition, a copy of the check shall be provided to EPA's representative identified in paragraph 6 below.

3. Failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest and penalties.

B. Compliance Actions

4. Beginning on the effective date of this Consent Agreement and Final Order, Respondent shall take the following actions at Respondent's Kimball, Nebraska, Hazardous Waste Incineration Facility ("Facility") according to the terms, conditions and time periods specified below:

a. Within 30 days, submit to EPA a written plan for minimizing the possibility of release of hazardous waste constituents from Building 55. The plan shall include, but not be limited to, a description of housekeeping measures to be implemented inside Building

55 and outside of the overhead doors of Building 55 to insure that hazardous waste constituents are not released from the building.

b. Within 60 days, submit to EPA a written plan for addressing cracks and gaps in secondary containment at the Facility. The plan shall include, but not be limited to, a description of measures to be implemented to insure that secondary containment is free of cracks and gaps.

c. Within 30 days of the performance test or design analysis conducted on the enclosed combustion control device that controls emissions from Tanks H-150A and H-150B in Building 55, submit to EPA the certification required by 40 C.F.R. § 264.1089(e)(1)(i) and either the documentation required for a design analysis, as specified in 40 C.F.R. § 264.1089(e)(1)(ii), or the documentation required for performance tests, as specified in 40 C.F.R. § 264.1089(e)(1)(iii).

d. Within 365 days, submit to EPA the records required by 40 C.F.R. § 264.1035(c) for Building 55.

e. Within 30 days following the end of each calendar year quarter, for a period of one year, Respondent shall submit to EPA:

i. Written summaries of the records of inspection and implementation of corrective measures generated pursuant to Section II.F. of Respondent's Hazardous Waste Treatment and Storage Facility Permit (Respondent's Permit) for all hazardous and universal waste container storage areas at the Facility that were inspected during the quarter.

ii. A copy of inspection reports that identify cracks and gaps in secondary containment at the Facility, the work order(s) generated to address the cracks and gaps, and a copy of the inspection reports and photographs that verify that the cracks and gaps have been repaired during the quarter.

5. Each plan, record, summary and report required to be submitted by Paragraph 4 above shall be accompanied by a cover letter that includes a signed certification that the documents submitted are, to the best of the certifying official's knowledge and belief, true, accurate, and complete.

C. Submittals

6. All documents required to be submitted to EPA pursuant to this Final Order shall be sent to:

Edwin Buckner AWMD/WEMM
U.S. EPA Region VII
901 N. 5th Street
Kansas City, Kansas 66101
Phone: (913) 551-7621
Fax: (913) 551-9621
E-mail: Buckner.Edwin@epa.gov.

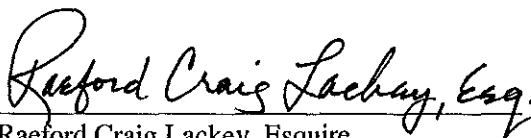
D. Termination

7. The provisions of this Consent Agreement and Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

For the Respondent:

Clean Harbors Environmental Services, Inc.

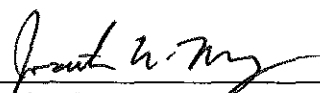
June 8, 2010
Date


Raeford Craig Lackey, Esquire
Vice President & Chief Counsel
Environmental Law and Litigation
Clean Harbors Environmental Services, Inc.

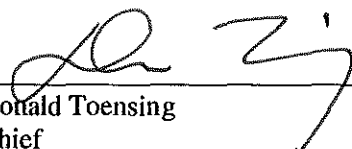
For the Complainant:

The United States Environmental Protection Agency

6/8/10
Date


Jonathan Meyer
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII

6-9-10
Date


Donald Toensing
Chief
Waste Enforcement and Materials Management Branch
U.S. Environmental Protection Agency
Region VII

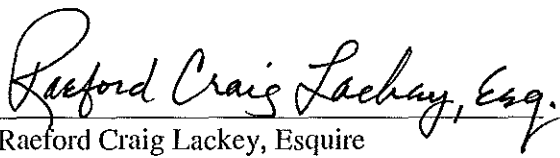
D. Termination

7. The provisions of this Consent Agreement and Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

For the Respondent:

Clean Harbors Environmental Services, Inc.

June 8, 2010
Date


Raeford Craig Lackey, Esquire
Vice President & Chief Counsel
Environmental Law and Litigation
Clean Harbors Environmental Services, Inc.

For the Complainant:

The United States Environmental Protection Agency

Date

Jonathan Meyer
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII

Date

Donald Toensing
Chief
Waste Enforcement and Materials Management Branch
U.S. Environmental Protection Agency
Region VII

IT IS SO ISSUED AND ORDERED:

June 10, 2010
Date

Robert Patrick
Robert Patrick
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order and Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Jonathan Meyer
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Raeford Craig Lackey, Esquire
Vice President & Chief Counsel
Environmental Law & Litigation
Clean Harbors Environmental Services, Inc.
400 Arbor Lake Drive, Suite B-900
Columbia, South Carolina 29223

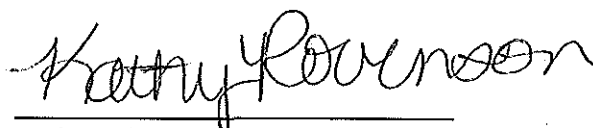
Copy by Facsimile and
First Class Pouch Mail to:

The Honorable Susan L. Biro
Chief Administrative Law Judge
U. S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20005

and

The Honorable Barbara Gunning
Administrative Law Judge
U. S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20005

Dated: 6/10/10



Kathy Robinson
Hearing Clerk, Region 7